

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

TERESA KOBECK,

Plaintiff

v.

Civil Action No. _____

WELLS FARGO BANK, N.A.,
Individually and as TRUSTEE
For OPTION ONE MORTGAGE,
OPTION ONE MORTGAGE
CORPORATION

Defendants

NOTICE OF REMOVAL

Pursuant to 28 U.S.C.A. §§ 1332, 1441 and 1446, Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), hereby removes this case. As grounds for removal, Wells Fargo states as follows:

1. This Action is one of a civil nature, wherein the United States District Court for the Western District of Tennessee, Western Division has jurisdiction pursuant to 28 U.S.C.A. § 1332.
2. This action was commenced on or about July 31, 2009 by the filing of a Complaint against Wells Fargo and Option One Mortgage Corporation (“Option One”) in the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, bearing Cause No. CH-09-1571-1. Copies of all pleadings in this action are attached to this Notice of Removal collectively as Exhibit A, and are incorporated herein by reference.
3. Wells Fargo was served with the complaint on August 19, 2009. (*See* Ex. A.) Accordingly, this Notice of Removal is timely under 28 U.S.C.A. § 1446(b).

4. Pursuant to 28 U.S.C.A. § 1446(d), all parties are being provided with written notice of removal and a copy of this Notice of Removal is being filed with the Clerk of the Chancery Court of Shelby County, Tennessee.

5. The complaint alleges that Plaintiff is a resident citizen of Shelby County, Tennessee. (Compl. ¶ 1.)

6. Wells Fargo is a national banking association incorporated under the laws of the United States. *See* 12 U.S.C.A. § 81. Its articles of association designate its Sioux Falls, South Dakota office as its main office. As a result, it is a citizen of the State of South Dakota for diversity jurisdiction purposes. *See, e.g., Wachovia Bank, Nat'l Assoc. v. Schmidt*, 546 U.S. 303, 318 (2006) (national bank is citizen of the state designated in its articles of association as its main office).

7. The Complaint alleges that Option One is a California corporation with its principal place of business in Orange County, California. (*Id.* ¶ 3.)

8. Thus, the controversy in this action is a controversy between citizens of different states. There is, therefore, complete diversity of citizenship between the parties, pursuant to 28 U.S.C.A. § 1332(a)(1).

9. The Complaint alleges that Plaintiff purchased the real property at issue for a contract sale price of One Hundred Twenty Five Thousand Dollars (\$125,000.00). (Compl. ¶ 4.) Attached as Exhibit “A” to the Complaint is a copy of Plaintiff’s H.U.D. Settlement Statement evidencing the \$125,000.00 purchase price.

10. Plaintiff financed the purchase of the real property with a loan from Option One in the amount of \$100,000, which was secured by a Deed of Trust executed by Plaintiff. (*Id.* ¶

5.) Attached collectively as Exhibit "B" to the Complaint is a copy of the Adjustable Rate Note executed by Plaintiff and a copy the Deed of Trust executed by Plaintiff.

11. The Complaint further alleges that Defendants conducted a foreclosure sale of the real property on November 26, 2007 and filed a forcible detainer action on February 24, 2009. (Compl. ¶¶ 12, 14.)

12. The Complaint seeks to enjoin Defendants from evicting Plaintiff from the real property at issue, to require Defendants to restructure Plaintiff's mortgage with Defendants, and seeks damages "in no less than the amount of Fifty Thousand Dollars (\$50,000.00)" plus attorney's fees, prejudgment interest and costs. (Compl. at 4, ¶¶ 2-5.)

13. The value of the Adjustable Rate Note and Deed of Trust, both of which were executed by Plaintiff, exceeds \$75,000 and, therefore, the amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs, pursuant to 28 U.S.C.A. § 1332(a). In a suit seeking injunctive relief, the amount in controversy is measured by the value of the object of the litigation. *See, e.g., Northup Prop., Inc. v. Chesapeake Appalachia, LLC*, 567 F.3d 767, 770 (6th Cir. 2009).

14. Venue properly rests in the Western Division of the United States District Court for the Western District of Tennessee, pursuant to 28 U.S.C.A. § 123(c)(2), since this action is being removed from the Chancery Court of Shelby County, Tennessee where it was originally filed.

15. As set forth in the Joinder of Removal filed herewith and attached as Exhibit B, Defendant Option One consents to and joins in the removal of this action to this Court.

16. For the foregoing reasons, this Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C.A. § 1332, as amended.

WHEREFORE, Wells Fargo removes this civil action from the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis.

RESPECTFULLY SUBMITTED, this the 18th day of September, 2009.

/s/ Melody McAnally

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Attorneys for Defendant Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I, Melody McAnally, one of the attorneys for Defendant Wells Fargo Bank, N.A., hereby certify that on September 18, 2009, I electronically filed the foregoing document with the Clerk of Court using the ECF system, which sent notification of such filing to the following, and I have also served a true and correct copy of the above foregoing via email to the following:

Gregory D. Cotton, Esq.
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/s/ Melody McAnally